

NM WCC

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THE TRIAL OF

Prison guard Emil Hugo Friedrich KOEBER.

Report by the Norwegian Representative,

J. Aars Rynning.

Trial by the Frosating Lagmannsrett, January, 1946.

Trial by the Supreme Court, ^{12th} March, 1947.

Public Prosecutor: Statsadvokat Harald Sund.

Counsel for the Defence: Høyesterettsadvokat Magne Schjødt.

Charge: Murder.

Indictment:

Defendant KOEBER was charged by the Director of Public Prosecutions with having committed war crimes which were in violation ^{of} of: # 1, cf. # 3 of The Provisional Decree of 4th May, 1945, which decides the punishment for act which, ~~by persons of the character of persons within the scope~~ were committed in violation of the laws and customs of war by enemy citizens or other aliens who were in enemy service or under enemy orders, and if the said acts were committed in Norway or were directed against Norwegian citizens or Norwegian interests and which augment the punishment if:

(a) the act caused grave bodily injury, grave suffering, prolonged deprivation of freedom, or extensive damage to property,

(b) the act resulted in death, even though this outcome was not intended,

(c) chapters 21, 22, and 25 of the Civil Criminal Code were repeatedly violated, or

(d) particularly aggravating circumstances were present, cf.

cf. Law No. 3 of 6th July, 1945, on the sanction of the death sentence, cf. # 233 of the Civil Criminal Code of 22nd May, 1902, which decides the punishment for acts which cause a person's death or cases of reiteration or in cases where particularly aggravating circumstances prevail.

The defendant came to Norway on 1st February, 1943, and became prison guard at Vollan prison where he remained until Christmas, 1944.

On 12th December, 1944, the defendant killed Ottar Aalberg, prisoner of Vollan prison by firing two salvos from his automatic pistol at the prisoner.

The defendant was first interrogated on 8th April, 1947, when he admitted having shot Ottar Aalberg on 12th December, 1944, but said he had been forced to fire as the prisoner had tried to escape. He had been on duty that evening and had seen the prisoner put his head through a hole dug into the ground in the yard. He had first called to Aalberg and then fired some warning shots into the air but as the prisoner had not taken any notice, he had been forced to fire some shots at him to prevent him from escaping.

On 7th May, 1946, the defendant was interrogated again and this time he made a different statement. He said the prison authorities had been dissatisfied with the slackness of the guards through whose laxity several prisoners had escaped. They had been warned and told to increase their vigilance. On 12th December, Aalberg had come into the courtyard and he had told him to take a ladder and lean it against the prison wall. He had then told Aalberg to climb up and when the prisoner was on the ladder, he fired several shots at him. The defendant did not give any further explanation except saying that he understood that it had been wrong of him to shoot the prisoner without reason. The above statement was read to the defendant and he signed it as correct. On 28th May the defendant was interrogated again. He referred to the statement of 7th May and when asked to read it through, refused to do so saying he knew perfectly well what it contained.

In the Lagmannsrett the defendant went back on the statement of 7th May and said his first statement had been correct. He had been forced to make the subsequent statement under pressure. There had been a witness present who had said to him: "In England they hang murderers, we shoot them." His balance of mind had also been disturbed for he had been kept in solitary confinement all the time and had not ^{even} been allowed to read. When taken for his daily walks, he had been handcuffed. All this had undermined his mental and physical strength and he had made the statement in fear.

The Court found that the interrogator had been within his rights when insisting on a correct statement as various facts had ^{since} emerged which went to show that Aalberg had not intended to escape. For instance, it had been proved that Aalberg had undergone several very hard physical exercises that day and had been beaten by the defendant. He had been physically and mentally exhausted and completely unfit for any strain an escape would have involved. Furthermore, the night had been cold and Aalberg had taken his pullover off just before entering the courtyard as he had intended only to go into the cellar to have a wash. Aalberg had been imprisoned for a very minor offence and expected his release before Christmas - another reason for his not running any unnecessary risks by trying to escape. The position of the body also went to show that Aalberg had not been anywhere near the hole in the ground or on the ladder leaning against the wall.

Witness reports, on the other hand, had shown that the defendant was one of the most sadistic prison guards Vollan had ever known. He had forever given the prisoners exhausting physical exercises and had tormented and tortured them.

The Court did not accept the defendant's plea that imprisonment in solitary confinement had undermined his mental and physical strength to a degree which would have made him confess to something he had not done. The defendant had taken part as police official in the German campaigns on Poland and Russia and must have been hardened enough to atrocities committed by the Germans there to stand simple solitary confinement.

The Court came to the conclusion that the defendant had killed Ot-tar Aalberg in cold blood and considered it an aggravating circumstance that he had been known as one of the worst guards of Vollan prison.

The defendant was unanimously sentenced to death. ^{by the Lagmannsrett on} The 14th January, 1946.

The defendant appealed against the sentence of the Lagmannsrett on the grounds that the punishment was too severe.

The Supreme Court, when considering the appeal, unanimously came to the conclusion that in view of the prevailing aggravating circumstances the application of capital punishment had been fully justified.
